

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Donald A. Lord,

Plaintiff,

-against-

City of New York et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 2/10/2023

1:20-cv-03890 (LTS) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

WHEREAS, by Order dated January 30, 2023 (ECF No. 174), the Court scheduled an in-person conference for February 9, 2023, and required that *pro se* Plaintiff be prepared at the conference to show cause why his case should not be dismissed for failure to prosecute and/or failure to comply with the discovery obligations set forth in the Court's January 9, 2023 Order (*i.e.*, failing to provide completed HIPAA authorizations form, failing to respond to interrogatories and failing to respond to documents requests); and

WHEREAS, Plaintiff and counsel for Defendants appeared at the February 9 conference and participated diligently and in good faith; and

WHEREAS, the Court finds there is no basis on the current record for dismissal of Plaintiff's claims for failure to prosecute or as a discovery sanction, given his efforts to comply with Court Orders.¹

¹ For example, Plaintiff had executed and emailed certain HIPAA authorization forms to Defendants, albeit with inappropriately limited date ranges. In addition, Plaintiff had attempted to respond to Defendants' document requests by forwarding hundreds of individual responsive emails to various Defendants via email. While this manner of production did not comport with Plaintiff's obligations under the Federal Rules of Civil Procedure, it reflected Plaintiff's good faith efforts.

NOW, THEREFORE, it is hereby ORDERED, as follows:

1. No later than Friday, February 24, 2023, Plaintiff shall download responsive emails onto a flash drive and mail the flash drive in an envelope addressed to: Stephen Kitzinger, New York City Law Department, 100 Church Street, New York, NY 10007. If the Law Department is unable to safely download the contents of the flash drive, Mr. Kitzinger shall file a letter to the ECF docket—along with a sworn declaration from a responsible person in the Law Department’s Information Technology Division stating that the contents could not safely be downloaded—seeking relief from the Court’s Order. Otherwise, Mr. Kitzinger promptly shall provide the flash drive contents to counsel for the other Defendants.

2. No later than Friday, February 24, 2023, Plaintiff shall email to Defendants’ counsel responses to: (a) Project Renewal Defendants’ Interrogatory No. 14, which asks him to “[i]dentify each and every person whom Plaintiff intends to call as a witness at the trial of this matter” and for each witness, to “include his/her name, address and telephone number, and provide a summary of his/her anticipated testimony” (*see* ECF No. 167-1, at 18); and (b) the City Defendants’ Interrogatory No. 3, which asks him to “[i]dentify all witnesses to the incident(s) which [he] allege[s] that the City of New York or Kadaza Johnson violated [his] rights as described in the [Second Amended Complaint].” (*See* ECF No. 168-1, at 4.) The Court finds that the remaining interrogatories that were the subject of my January 30, 2023 Order adequately were addressed on the record during the February 9 conference. The subject line for Plaintiff’s email setting forth the foregoing responses shall be “Responses to Interrogatories” and the email shall be sent to all Defendants.

3. Defendants promptly shall mail the HIPAA authorization forms that were executed during the February 9 conference to the respective medical facilities.

4. Defendants promptly shall mail the Medicare and Medicaid release forms that were executed during the February 9 conference to the appropriate recipients.

5. The deadline for the completion of discovery is adjourned *sine die*.

6. The parties are directed to appear for a telephone conference on Monday, March 13, 2023, at 2:00 p.m. to discuss the status of the discovery set forth herein. At the scheduled time, the parties shall each separately call (888) 278-0296 (or (214) 765-0479) and enter access code 6489745.

A copy of this Order will be emailed to Plaintiff by Chambers.

SO ORDERED.

Dated: New York, New York
February 10, 2023



STEWART D. AARON
United States Magistrate Judge